IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4983 of 2007()

CRMP.1811/2007 of DISTRICT COURT, KOTTAYAM

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CRIME NO.274/2007 OF ERATTUKPETTA POLICE STATION

PETITIONER/ACCUSED

AJMAL, S/O ABDUL HAMEED,
AGED 19 YEARS, KATTAMALAYIL HOUSE,
NADACKAL P.O., ERATTUPETTA.

BY ADV. SRI.SUNIL V.MOHAMMED

RESPONDENTS: STATE

THE STATE OF KERALA,
REP.BY THE S.I. OF POLICE, ERATTUPETTA,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.4983 of 2007

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Dated this the 14th day of August, 2007

ORDER

Application for anticipatory bail. Petitioner is the 2nd accused. The 1st accused was arrested under suspicious circumstances. He had copper wire weighing 1.75 kgs in his possession. Arrest was effected under Sec. 41(1)(d) and 102 Cr.P.C. On interrogation of the first accused it was revealed that offence of theft had been committed by the first accused in collusion with the petitioner herein and another in respect of the said copper wire. Accordingly the section under 379 read with 34 IPC has been included. The petitioner stands arrayed as accused. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has nothing to do with the first accused. The petitioner apprehends that one Kochumohammed with whom the petitioner has a strained relationship has prevailed upon the Police to raise such false allegations against the petitioner. There was already dispute between the petitioner and the said Kochumohammed about a right of way. Solely because of that, wild

allegations are being raised through the mouth of the first accused, it is submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that in the facts and circumstances of the case there is absolutely no reason to doubt or suspect the version of the first accused. At any rate, the version of the first accused deserves to be cross checked and verified. Interrogation of the petitioner is absolutely essential. He may not be granted anticipatory bail at this stage. He has to be interrogated and truth ascertained from him. There is absolutely no necessity in the facts and circumstances of the case to invoke the extraordinary equitable discretion under Section 438, submits the learned Public Prosecutor. This is a fit case where the petitioner must be directed to cooperate with the Investigating Officer and appear before the learned Magistrate or the Investigating Officer and then seek regular bail, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. There are no features in this case suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the learned Magistrate or the Investigating Officer and seek regular bail in the ordinary and normal course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail,after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE